

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b))

Description of the Case.

Criminal Misc. Appl. No. 446 of 2006

Date of Decision : 23.06.2006

A.F.R. (Approved for reporting)

Not approved for reporting

Date:- 23.06.2006

Initial of Judge

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.446 of 2006

1. Sudarshan Sharma
S/o late Harbansh Lal Sharma
Pradhan Arya Pratinidhi Sabha
Punjab Gurudatt Bhawan Kirshna
Chowk Jalandhar (Punjab) &
Chancellor Gurukul Haridwar
Viswavidhyalaya Haridwar
 2. Swantantra Kumar S/o Sri Shanti Swarup Murgal
Presently R/o Gurukul Kangari
P.S. Kankhal
District Haridwar
Mukhya Adhishthata Gurukul Kangari
Viswavidhyalya Haridwar
 3. Mahendra Kumar S/o late Sri Dharampal
Vidhyalankar
Viswavidhyalya Haridwar
Presently Gurukul Kangari
P.S. Kankhal
District Haridwar
- ... Applicants

Versus

1. State of Uttaranchal
 2. Dr. Deena Nath
S/o Rameshwar Sharma
R/o Bara Pariwar
Gurukul Kangari
P.S. Kankhal District Haridwar
- ... Respondents

Dated :- 23rd June, 2006

Mr. Arvind Vashisht learned counsel for the applicants.

Mr. S. P. S. Panwar learned senior counsel for the respondent No.2.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the orders dated 12.06.2006 passed by the Sessions Judge, Haridwar in criminal revision No.207/2006 and order dated 26.04.2006 passed by the Judicial magistrate, Haridwar in case No.364/2006 Dr. Deena Nath Sharma Vs. Sudarshan Sharma & others under section 409 IPC.

2. Brief facts of the case are that a complaint was filed against the applicants alleging therein the applicants were authorized to transit bank account of Gurukul Kangari Vidyalaya and with an intention to misappropriate its money an amount of Rs.18 lakhs was transferred to another account which was opened in their joint name and thus the applicants have misappropriated the money belonging to Gurukul Kangari Vidhyalaya. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he summoned the applicants vide order dated 26.04.2006. Certain documents were also filed in support of the prosecution. Feeling aggrieved by the order of the Magistrate, the applicants have preferred a revision before the Sessions Judge and the same was dismissed on 12.06.2006. The Sessions Judge has also directed the applicants to approach the Judicial Magistrate, who has passed the summoning order. Feeling aggrieved by the both the orders, the applicants have preferred the present petition.

3. It was contended on behalf of the applicants that while dismissing the revision the Sessions Judge committed an error in directing the applicant to approach to the Magistrate, who had passed the summoning order. It was contended that such direction cannot be given and the Magistrate has no power to recall its earlier order. Learned counsel for the respondent no.2 could not support the said portion of the order. In view of the decisions of the Hon'ble Supreme Court in **Adalat Prasad Vs. Roop Lal Jindal Air SC(W) p/5174** and **Subramaniam Sethuraman Vs. State of Maharashtra 2005 SCC(Cri) p/242**, the

Cognizance order cannot be challenged before the trial court and trial court has got no jurisdiction to recall its earlier order, which was already passed by him. In the aforesaid decisions, it has been held that the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under section 482 Cr.P.C. The only remedy for the applicant is to challenge the cognizance order under section 482 Cr.P.C. Therefore, the direction contained in the order dated 12.06.2006 passed by the Sessions Judge is liable to be quashed.

4. It was further contended that the order dated 26.04.2006 passed by the magistrate was illegal and improper and the same has been passed without applying mind. It was further contended that even the statement of the complainant establishes that the applicants had withdrawn certain amount from the bank and the said amount was deposited in their joint account and as such they misappropriated the amount. Learned counsel for the respondent no.2 contended that the prosecution has established that the said money was misappropriated and it was used for their personal use and it was deposited in the joint account of the applicants. In exercise of the powers under section 482 Cr.P.C. the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. B.P.Bhat (CW3), Senior Branch Manager, PNB Gurukul Kangari, Haridwar has supported the complaint. He had stated in his deposition that the applicants opened a joint account in their names and the money was transferred to the said account. He also filed

certain documents in support of his evidence. It was also contended that the said account was opened for the official purpose and certain expenditures were made in pursuance of the directions of the competent authority i.e. management committee. It was the joint account and the Magistrate should have summoned the relevant documents from the office of the accused persons to know the real fact. He has stated nowhere that the said account pertains to any of the institution. The learned Magistrate should have decided the veracity of the said points and he should have put the questions to the witnesses. This is a case where the magistrate instead of proceeding under section 202 Cr.P.C. for recording the evidence should have directed either to the police or to any other person to make the inquiry and to submit its report. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. In this way, the entire evidence would have come and thereafter he should have proceeded to take cognizance.

5. In view of the above, the Magistrate has not applied its judicial mind. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicant has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705**, in which it has been held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

6. The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

7. In view of the above, the summoning order passed by the learned Magistrate is liable to be set aside. The

Magistrate should have put the question to the complainant as well as to the witnesses to know the veracity of the incident. It will open to the Magistrate instead of proceeding under section 202 Cr.P.C. can direct either to the police or to any other person to make the inquiry and to submit its report. After obtaining the said report, the magistrate will proceed with the case in accordance with law.

8. Therefore, the summoning order dated 26.04.2006 passed by the Judicial Magistrate, Haridwar in case No.364/2006 and order dated 12.06.2006 passed by the Sessions Judge, Haridwar in criminal revision No.207/2006 are set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

9. The petition is disposed of accordingly. The misc. application, if any, is also disposed of.

(J. C. S. Rawat, J.)

Dated 23.06.2006

LSR

